IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE AT NASHVILLE

DANNY RAY MEEKS v. JAMES FORTNER, WARDEN

Direct Appeal from the Circuit Court for Hickman County
No. 07-5027C Timothy Easter, Judge

No. M2007-01472-CCA-R3-HC - Filed December 18, 2007

Petitioner, Danny Ray Meeks, was convicted of aggravated kidnapping, especially aggravated robbery, aggravated burglary, and extortion. *State v. Meeks*, 867 S.W.2d 361 (Tenn. Crim. App. 1993). He was sentenced to twenty (20) years for aggravated kidnapping, twenty (20) years for especially aggravated robbery, fifteen (15) years for aggravated burglary, and eight (8) years for extortion. The sentences for aggravated kidnapping, especially aggravated robbery, and extortion were ordered to be served consecutively to each other, with the sentence for aggravated burglary to be served concurrently with the other sentences, for a total effective sentence of forty-eight (48) years. Petitioner has filed a petition for writ of habeas corpus relief which was summarily dismissed by the trial court. He timely appealed, and the State has filed a motion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee for this case to be affirmed by memorandum opinion. Petitioner filed a reply brief in opposition to the State's motion. Having considered the entire record, we conclude that the State's motion should be granted. Accordingly, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Danny Ray Meeks, Only, Tennessee, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter; J. Ross Dyer, Assistant Attorney General; and Ronald L. Davis, III, District Attorney General, for the appellee, the State of Tennessee.

MEMORANDUM OPINION

Petitioner asserts that he is entitled to habeas corpus relief because his individual sentences were enhanced by the judge without factual findings of enhancement factors made by a jury. He also argues that the trial court violated his right to a trial by jury by making the determination, without a jury finding, that some of the sentences should be served consecutively.

In order to be entitled to habeas corpus relief, the judgment must be void on its face and not merely voidable. *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). A void judgment is facially invalid when the trial court did not have the authority to render the judgment. A voidable judgment is facially valid, but requires proof beyond the face of the record or judgment to show that it is voidable. *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998).

Petitioner asserts that *Blakely v. Washington*, 542 U.S. 296 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) and *Cunningham v. California*, 549 U.S. _____ 127 S. Ct. 856, 166 L. Ed. 2d. 856 (2007), mandate the conclusion that his sentences were unconstitutionally enhanced in violation of his Sixth Amendment right to a jury trial. Based upon case law, however, Petitioner is not entitled to relief. This Court has previously held that *Blakely* does not affect the trial court's ability to find facts essential to justify consecutive sentencing. *See State v. Eric Lumpkins*, No. W2005-02805-CCA-R3-CD, 2007 WL 1651881, at *12 (Tenn. Crim. App. at Jackson, June 7, 2007), *perm. app. granted* (Tenn. Oct. 15, 2007), and cases cited therein.

This Court has also held that *Blakely* and *Cunningham* are not to be applied retroactively. *Timothy R. Bowles v. State*, No. M2006-01685-CCA-R3-HC, 2007 WL 1266594 at *2-3 (Tenn. Crim. App. at Nashville, May 1, 2007). In addition, even if *Blakely* and *Cunningham* could be applied retroactively, it would render the judgments merely voidable, and not void. As a result, Petitioner's claims are not cognizable in a Tennessee habeas corpus proceeding. *Billy Merle Meeks v. Ricky J. Bell, Warden*, No. M2005-00626-CCA-R3-HC, 2007 WL 4116486 at *1-8 (Tenn. Crim. App., at Nashville, Nov. 13, 2007).

Petitioner is not entitled to relief in this appeal.

CONCLUSION

The judgment rendered in this case was taken in a proceeding before the trial court without a jury and the judgment was not a determination of guilt, and the evidence in the record does not preponderate against the finding of the trial court. No error of law requiring a reversal of the judgment is apparent on the record. Accordingly, the judgment of the trial court is affirmed pursuant to Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee.

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THOMAS T. WOODALL, JUDGE